

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NEIL H. MINGLEDORFF

Appeal No. 95-2264
Application 08/125,750¹

ON BRIEF

Before MEISTER, FRANKFORT and McQUADE, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 5 through 9 and 11 through 22 as amended subsequent to the final rejection in papers filed on June 27 and 29, 1994 (Paper Nos. 8 and 9).² Claims 5 through 9 and 11

¹ Application for patent filed September 24, 1993.

² While the examiner has approved entry of the amendments filed under 37 CFR § 1.116, we note that these amendments have not as of yet been clerically entered. This oversight should be corrected in any further prosecution before the examiner.

through 22 are all of the claims remaining in this application. Claims 1 through 4 and 10 have been canceled.

Appellant's invention relates to an auxiliary, after-market, rearview mirror assembly for attachment to a conventional side-mounted rearview mirror that is already mounted on a vehicle. Objectives of appellant's invention are (1) to eliminate the blind spot which exists when only using a conventional flat or convex side-mounted vehicle rearview mirror, and (2) to increase the angular viewing range of such conventional mirrors without requiring replacement of the conventional mirrors. Claims 21 and 22 are representative of the subject matter on appeal and a copy of those claims appears in the Appendix to appellant's brief.

The prior art references relied upon by the examiner in rejecting the appealed claims under 35 U.S.C. § 103 are:

Bloom	4,223,983	Sep. 23, 1980
Otaka	2,144,240	Jun. 4, 1990
(Japanese Patent) ³		
Musinu	443,990	Aug. 28, 1991
(European Patent Application)		

Based on the examiner's commentary on pages 1 through 4 of the examiner's

³ Our understanding of this Japanese language document is based upon a translation prepared for the U.S. Patent and Trademark Office. A copy of that translation accompanies this decision.

answer (Paper No. 13), we understand the rejection before us on appeal to be that of claims 5 through 9 and 11 through 22 under 35 U.S.C. § 103 as being unpatentable over Bloom in view of Musinu and Otaka.⁴

Rather than attempt to reiterate the examiner's full commentary with regard to the above-noted rejection and the conflicting viewpoints advanced by the examiner and appellant regarding the rejection, we make reference to the examiner's answer (Paper No. 13, mailed October 28, 1994) for the examiner's reasoning in support of the rejection, and to appellant's brief (Paper No. 12, filed July 26, 1994) for appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by appellant and the examiner. As a consequence of our review, we have made the determination that the examiner's rejection of the appealed claims under 35 U.S.C. § 103 is not well founded and will therefore not be sustained. Our reasoning in support of this determination follows.

The Bloom patent discloses an auxiliary, or after-market, wide angle mirror assembly (10) for attachment to a conventional side-mounted rearview mirror (11, 12).

⁴ The examiner's attention is directed to § 1208 of the M.P.E.P. for proper guidance on the content and format of an examiner's answer.

Bloom seeks to eliminate the blind spot which exists when only using the conventional flat, side-mounted vehicle rearview mirror and to increase the angular viewing area of the conventional mirror. The assembly (10) comprises an integrally molded box-like body (15), a rigid plate (25) attachable to the body (15), and a relatively thick resilient pad (26) and adhesive layers (27, 28) on the pad for joining the resilient pad to the plate (25) and mounting the mirror assembly onto the conventional mirror glass (12).

As noted at column 3, lines 48-59, the exposed curved surface (38) of the box-like body is coated with a suitable reflective coating to produce the wide angle reflective effect, but, alternatively, the entire outer surface of the box-like body may be so coated or mirrored. The mirror assembly of Bloom differs from that set forth in appellant's claim 21 on appeal in that it does not include a first flat mirror and a second convex mirror, each of which are "positioned within said housing" and in a respective first and second predetermined relationship with the rear surface of the housing. The mirror assembly of Bloom differs from that set forth in appellant's claim 22 on appeal in that it does not include a first convex mirror and a second convex mirror, each of which are "positioned within said housing" and in a respective first and second predetermined relationship with the rear surface of the housing.

The examiner's attempt to selectively modify the auxiliary mirror assembly of Bloom by the disparate teachings of the factory-installed mirror assemblies of Musinu and Otaka is unavailing. In our opinion, it is contrary to the teachings of Bloom to

modify the integrally molded body or housing therein, with its curved coated mirror surface (38), in the manner proposed by the examiner so as to arrive at the mirror assembly as defined in appellant's claims 21 and 22 on appeal. It is our view that in searching for an incentive for modifying the auxiliary mirror assembly of Bloom the examiner has impermissibly drawn from appellant's own teachings and fallen victim to what our reviewing Court has called "the insidious effect of a hindsight syndrome wherein that which only the inventor has taught is used against its teacher." W. L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 313 (Fed. Cir. 1983). Since we have determined that the examiner's conclusion of obviousness is based on a hindsight reconstruction using appellant's own disclosure as a blueprint to arrive at the claimed subject matter, it follows that we will not sustain the examiner's rejection of independent claims 21 and 22 under 35 U.S.C. § 103, or that of claims 5 through 9, 11 through 20 which depend therefrom.⁵

The decision of the examiner to reject claims 5 through 9 and 11 through 22 under 35 U.S.C. § 103 is reversed.

REVERSED

⁵ As to the examiner's reliance on the Aikawa et al. reference (answer, pages 7-8), we direct attention to In re Hoch, 428 F.2d 1341, 1342 n.3, 166 USPQ 406, 407 n.3 (CCPA 1970), cited in § 706.02(I) of the Manual of Patent Examining Procedure (M.P.E.P.).

Appeal No. 95-2264
Application 08/125,750

JAMES M. MEISTER
Administrative Patent Judge

CHARLES E. FRANKFORT
Administrative Patent Judge

JOHN P. McQUADE
Administrative Patent Judge

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